

# EXHIBIT 1

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IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE DISTRICT OF DELAWARE

APPLE INC.,	)	
Plaintiff,	)	
v.	)	C.A. No.
	)	22-1377-MN-JLH
MASIMO CORPORATION and	)	
SOUND UNITED, LLC,	)	
Defendants.	)	
	)	
<hr/> MASIMO CORPORATION,	)	
Counter-Claimant,	)	C.A. No.
v.	)	22-1377-MN-JLH
	)	
APPLE INC.	)	
Counter-Defendant.	)	
<hr/> APPLE INC.,	)	
Plaintiff,	)	
v.	)	C.A. No.
	)	22-1378-MN-JLH
MASIMO CORPORATION and SOUND UNITED,	)	
LLC,	)	
Defendants.	)	
	)	
<hr/> MASIMO CORPORATION and	)	
CERCACOR LABORATORIES, INC.,	)	
Counter-Claimants,	)	
v.	)	
APPLE INC.	)	
Counter-Defendant.	)	

Wilmington, Delaware  
Tuesday, June 20, 2023  
*Telephonic Ruling*

- - - -

BEFORE: HONORABLE JENNIFER L. HALL  
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

Michele L. Rolfe, RPR, CRR

1 APPEARANCES:

2  
3 POTTER ANDERSON & CORROON LLP  
4 BY: DAVID E. MOORE, ESQ.

5 -and-

6 DESMARAIS LLP  
7 BY: JORDAN N. MALZ, ESQ.  
8 KERRI-ANN LIMBEEK, ESQ.

9 -and-

10 WILMER CUTLER PICKERING HALE AND DORR LLP  
11 BY: JENNIFER MILICI, ESQ.  
12 MARK A. FORD, ESQ.

13 For the Plaintiff

14 PHILLIPS MCLAUGHLIN & HALL, P.A.  
15 BY: JOHN C. PHILLIPS, ESQ.

16 -and-

17 KNOBBE, MARTENS, OLSON & BEAR, LLP  
18 BY: STEPHEN W. LARSON, ESQ.  
19 ADAM POWELL, ESQ.  
20 RYAN HORN, ESQ.

21 For the Defendants

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2 P R O C E E D I N G S

3 (REPORTER'S NOTE: The following teleconference was  
4 held beginning at 12:00 p.m.)

5 THE COURT: Good afternoon, everyone. This is  
6 Jennifer Hall. We're here on the call for a continuation of  
7 the hearing we started last week on the pending motions to  
8 dismiss and strike in 22-1377 and 22-1378.

9 Can I have appearances for Apple, please?

10 MR. MOORE: Good afternoon, Your Honor, David  
11 Moore from Potter Anderson. I'm joined by a few of my  
12 co-counsel from the Desmarais, Jordan Malz and Kerri-Ann  
13 Limbeek. Also from the Wilmer team Jennifer Milici and Mark  
14 Ford. As well as our attendees from the hearing, Megan  
15 Thomas Kennedy and Natalie Poe from Apple.

16 THE COURT: Greet. Good afternoon to you all.

17 May I please have appearances for Masimo?

18 MR. PHILLIPS: Good afternoon, Your Honor. This  
19 is Jack Phillips. With me on the line are Steve Laron, Ryan  
20 Horn and Adam Powell of the Knobbe Martens firm.

21 THE COURT: Great. Good afternoon to all of  
22 you.

23 Okay. I'm ready to give my report and  
24 recommendation on the pending motions to dismiss and strike.

25 I'm going to recommend that all of the pending

1 motions be denied.

2 I'll summarize the reasons for that  
3 recommendation in a moment. But, before I do, I want to be  
4 clear that my failure to address a particular argument or  
5 case cited by a party does not mean that I did not consider  
6 it. We have carefully considered everything.

7 Plaintiffs Apple, Inc. sells Apple watches.  
8 Defendant Masimo Corporation has launched a health watch  
9 called the W1 watch.

10 Apple and Masimo each have patents relating to  
11 aspects of their products. The cases in this court are not  
12 the only cases between Apple and Masimo regarding their  
13 watch products. At the Court's request, the parties saw the  
14 chart filed at Docket No. 98 in the 1377 case, that lists  
15 the proceedings between the parties, which includes a trade  
16 secret case filed by Masimo in Federal Court in the Central  
17 District of California and International Trade Commission  
18 investigation initiated by Masimo, and an incredible number  
19 of IPRs.

20 In the 1377 case before this court, Apple  
21 alleges that Masimo and defendants, Sound United, infringed  
22 certain of Apple's design patents, that's D883,279;  
23 D947,842; D962,936; and D735,131.

24 In that case, defendants, Sound United, has  
25 moved to dismiss the claims against it for failure to state

1 a claim. That's Docket No. 29.

2 Masimo answered the complaint and asserted an  
3 inequitable conduct defense and counterclaim. And Apple has  
4 moved to dismiss Defendant Masimo's inequitable conduct  
5 counterclaim for failure to state a claim and to strike  
6 Masimo's inequitable conduct defense. And that's D.I. 54.

7 In the 1378 case, Apple alleges that Masimo and  
8 Sound United infringed certain of Apple's utility patents:  
9 Nos. 10,076,257; 10,627,783; 10,942,491; 10,987,054;  
10 11,106,352; 11,474,483. Here, again, defendant, Sound  
11 United, has moved to dismiss the claims against it for  
12 failure to state a claim. That's Docket No. 13.

13 Masimo answered the complaint and asserted  
14 various counterclaims, including counterclaims for  
15 antitrust, false advertising, unfair competition,  
16 infringement of some of Masimo's utility patents,  
17 inequitable conduct and others.

18 Apple has moved to dismiss some of Masimo's  
19 counterclaims, including the inequitable conduct  
20 counterclaim and to strike Masimo's inequitable conduct  
21 defense.

22 Because I'm speaking primarily for the parties  
23 and the District Judge, rather than describe all of the  
24 allegations across four voluminous pleadings at the outset,  
25 I will recite only those allegations necessary to resolve

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1 the disputes before me as I address them.

2 I'm not going to read into the record my  
3 understanding of the legal standard that applies to a motion  
4 to dismiss for failure to state a claim or how that standard  
5 has been applied in the context of pleading infringement.

6 I set forth a recitation of the applicable legal  
7 standards in my report and recommendation in *Boston Fog, LLC*  
8 *v. Ryobi Technologies, Inc.*, No. 19-2310, 2020 WL 1532372,  
9 from Mar. 21, 2020. And I incorporate that articulation by  
10 preference.

11 To the extent that other legal standards apply,  
12 I will discuss them where applicable. I'll start with Sound  
13 United motions to dismiss the 1377 case.

14 Sound United moves to dismiss the infringement  
15 claim against it for failure to state a claim.  
16 Specifically, Sound United argues that the complaint fails  
17 to allege facts plausibly suggesting that Sound United, as  
18 opposed to Masimo, made, used, offered to sell, sold or  
19 imported a W1 watch.

20 Apple responds that the complaint's allegations  
21 raise a reasonable inference that Sound United committed an  
22 infringement act.

23 In particular, the complaint alleges that in  
24 2022, after Masimo had brought an ITC action to block  
25 importation of the Apple watch, Masimo announced that it

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1 Sound United knew that Masimo's purpose in the acquisition  
2 was to use Sound United to distribute the W1 watch, which  
3 competes with the Apple watch and Sound United was aware of  
4 Apple's design patents relating to the Apple batch.

5 Sound United's motion to dismiss in the 22-1377  
6 case, that's Docket 29, should be denied.

7 Turning to the 1378 case. My recommendation and  
8 rationale equally applies to Sound United's motion to  
9 dismiss in the 1378 case.

10 That complaint refers to certain of Apple's  
11 utility patents relating to aspects of wearable electronic  
12 devices, and it makes nearly identical allegations regarding  
13 Sound United. For the same reasons as in the 1377 case,  
14 Apple's complaint in the 1378 case pleads sufficient facts  
15 to raise a plausible inference that Sound United directly  
16 infringed the asserted patents.

17 Sound United, again, argues that there is no  
18 plausible allegation that it knew about the patents or  
19 intended to cause infringement, and it contends that the  
20 indirect infringement and willfulness claim should be  
21 dismissed for those reasons. However, I agree, again, with  
22 Apple that the complaint plausibly alleges that Sound United  
23 had knowledge of Apple's patents and that the W1 watch is  
24 accompanied by instructions that tell customers how to use  
25 it in a manner that infringes.

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1 would acquire Sound United for over \$1 billion "to  
2 accelerate distributions of the combined companies expanding  
3 portfolio of consumer healthcare products." And Masimo  
4 stated that Sound United's "distribution channel... is  
5 essential to what we're doing as an important product for  
6 us, which is Masimo." And that's at paragraph 37 of the  
7 complaint.

8 Masimo subsequently released a W1 watch a few  
9 months later in August 2022. Taking those and the other  
10 allegations as true, I agree that they plausibly suggest  
11 that Sound United has sold, offered to sell or imported W1  
12 watch.

13 Sound United also moved to dismiss the willful  
14 infringement claim against it for failure to state a claim.  
15 It argued that the complaint lacks sufficient factual  
16 allegations to plausibly suggest that Sound United knew of  
17 the asserted patents.

18 I disagree. Apple has plausibly alleged that  
19 while Masimo was monitoring Apple's patents relating to the  
20 Apple watch and instituting litigation to push the Apple  
21 watch out of the market, Masimo was preparing to launch its  
22 W1 that copied Apple's product and infringed Apple's  
23 patents. In this context, Masimo acquired Sound United for  
24 the publically-announced purpose of distributing the W1  
25 watch. It can be plausibly inferred from those facts that

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1 So Sound United's motion to dismiss case  
2 22-1378, Docket No. 13, should also be denied.

3 Whether Apple can actually prove that Sound  
4 United committed an infringing act, that it knew about the  
5 asserted patents and that it acted willfully, only time will  
6 tell, but Apple has plausibly alleged both willful and  
7 direct infringement, so the claims should go forward to  
8 discovery.

9 Moving on to Apple's motions. In both cases,  
10 Apple moved to dismiss Masimo's inequitable conduct  
11 counterclaims and to strike Masimo's inequitable conduct  
12 affirmative defenses.

13 The gist of one set of Masimo's inequitable  
14 conduct allegations is that particular individuals at Apple  
15 concealed from the respective examiners that Apple was  
16 obtaining design patents and utility patents on the same  
17 features. In support, Masimo alleges that the shape of the  
18 dome and the configurations of the biological sensors and  
19 some of Apple's utility patents, including one of the  
20 patents asserted by Apple in the 1378 case, and applications  
21 are functional and are substantially identical to the dome  
22 and sensor designs and some of its design patents asserted  
23 in the 1377 case, but that Apple listed different inventors  
24 on each in an attempt to conceal that fact from the  
25 respective examiners.

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1 Masimo further alleges that particular  
 2 individuals at Apple, including Apple Chief IP counsel  
 3 Jeffrey Myers, and the individual named inventors  
 4 coordinated to carry out the scheme by, among other things,  
 5 compartmentalizing the information that would get disclosed  
 6 to the examiners by hiring separate law firms to prosecute  
 7 the utility and the design patents.

8 Masimo alleges that the withheld information is  
 9 material to some of the asserted design patents because had  
 10 the examiner known that the design patents covered  
 11 functional features, the design patents wouldn't have  
 12 issued.

13 Masimo further alleges that the  
 14 misrepresentations about who the actual inventors were is  
 15 also material to patentability of those design patents.

16 Apple contends that Masimo's allegation should  
 17 be stricken because they failed to satisfy -- excuse me,  
 18 strike that. Apple contends that Masimo's inequitable  
 19 conduct allegation should be dismissed and its defense be  
 20 stricken because they failed to satisfy Federal Rule of  
 21 Civil Procedure 9(b)'s particularity standard. That rule  
 22 requires the pleadings to allege the specific who, what,  
 23 when, where and how of the alleged inequitable conduct.  
 24 Moreover, although knowledge and intent may be alleged  
 25 generally, the pleading must nonetheless contain sufficient

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1 allegations of facts from which the Court may reasonably  
 2 infer that a specific individual, one, knew of the withheld  
 3 material information or the falsity of the material  
 4 misrepresentations; and, two, withheld or misrepresented  
 5 this information with a specific intent to deceive the PTO.

6 Apple contends that Masimo's allegations failed  
 7 to plead a specific "who," and that that individual knew of  
 8 the withheld or misrepresented information.

9 I disagree. With respect to the "who," it is  
 10 true that many of Masimo's allegations are formulated  
 11 conjunctively, for example, Mr. Myers, the Named Design  
 12 Inventors, and others at Apple involved in the prosecution  
 13 of the sensor design patents, and Apple, through Mr. Myers  
 14 and others involved in the prosecution of the sensor design  
 15 patent.

16 However, I agree with Masimo that the fact that  
 17 Masimo gratuitously alleges that others at Apple may have  
 18 also been involved does not change the fact that Masimo  
 19 identified specific individuals. Masimo's pleading also  
 20 linked the specific individuals to specific conduct making  
 21 clear who is alleged to have done what. For example, it  
 22 alleges that the Named Design Inventors knew through their  
 23 involvement in the development process that the claimed  
 24 design are functional and non-ornamental and had been  
 25 developed by the inventors listed on the utility patents,

12

1 but intentionally failed to disclose that information to the  
 2 PTO.

3 It also alleges, for example, that Mr. Myers  
 4 selected different law firms to prosecute the design and the  
 5 utility patents for the purpose of ensuring that the law  
 6 firms wouldn't know about and disclose information about the  
 7 other application to the PTO examiner.

8 Apple contends that Masimo's pleading fails to  
 9 sufficiently allege that Mr. Myers owed a duty of disclosure  
 10 to the PTO. As relevant here, the duty of disclosure  
 11 applies to every person who is substantially involved in the  
 12 preparation or prosecution of the application and who is  
 13 associated with the inventor or the applicant.

14 The Federal Circuit has interpreted  
 15 "substantively involved" to mean the involvement relates to  
 16 the context of the application or decisions related thereto  
 17 and that the involvement is not wholly administrative or  
 18 secretarial in nature.

19 I agree with Masimo that it has alleged enough  
 20 here to get past a motion to dismiss. It alleges that he  
 21 was involved in the selection of different law firms to  
 22 prosecute the patents' compartmentalized information so that  
 23 persons involved in the prosecution of the design patents  
 24 would not know that the claimed designs were actually  
 25 functional and non-ornamental, and would not disclose

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1 material information adverse to Apple's position.

2 Masimo also points out that he is listed, along  
 3 with many others, under Apple's PTO customer number as a  
 4 practitioner with power of attorney for Apple.

5 Apple essentially argues that even taken as  
 6 true, Masimo's allegations do not amount to substantive  
 7 involvement. But the Federal Circuit has explained that, in  
 8 conducting the substantive involvement inquiry, the  
 9 "District Court may properly consider a variety of factors,  
 10 such as an individual's position within the company, role in  
 11 developing or marketing the patented idea, contacts with the  
 12 inventors or prosecutors and representations to the PTO."

13 Masimo's allegations taken as true suggest that  
 14 a particular named individual managed the patent prosecution  
 15 process, selected Apple's patent prosecution attorneys and  
 16 agents, and essentially controls what information would be  
 17 disclosed to whom. I can't say that such facts if proven  
 18 could never amount to inequitable conduct.

19 Apple also challenges the inequitable conduct  
 20 claims on the basis that it's not plausible that any of the  
 21 identified individuals had an intent to deceive. However,  
 22 defendants are not required at the pleading stage to prove  
 23 or even plead that a specific deceptive intent is a single  
 24 most reasonable inference to be drawn from the facts  
 25 alleged. The Court only needs to assess whether the facts

1 as pleaded give rise to a reasonable inference of intent to  
2 deceive, and the allegations already described are  
3 sufficient to meet that standard.

4 I also agree with Masimo that its allegation of  
5 materiality with respect to the failure to disclose the  
6 utility applications during the prosecution of the design  
7 patents is sufficient to survive a motion to dismiss. Among  
8 other things, Masimo points out that patent examiners are  
9 permitted to cite the specification of an analogous utility  
10 patent evidencing the claimed design as evidence supporting  
11 rejection of a design patent. And that the specifications  
12 of the allegedly withheld utility patents appear to describe  
13 functions to certain features of the claimed design.

14 Whether Masimo will ultimately be able to prove  
15 that the claimed designs are functional is a question for a  
16 later day.

17 Masimo also alleges inequitable conduct in  
18 connection with prosecution of some of the asserted utility  
19 patents. The gist of this allegation is that individuals at  
20 Apple involved in the prosecution, including Mr. Myers,  
21 failed to disclose certain prior art references material to  
22 patentability. Here, again, Apple contends that Mr. Myers  
23 was not substantively involved in prosecution, however, as  
24 before, I decline to make that determination at this stage  
25 of the case.

1 Apple also contends that Masimo fails to  
2 plausibly allege that he knew of the allegedly undisclosed  
3 material prior art or had a specific intent to deceive the  
4 PTO. However, Masimo alleges that he was involved in IPR  
5 proceedings wherein Apple asserted the undisclosed prior art  
6 references that are the basis of Masimo's inequitable  
7 conduct allegation. That is sufficient to raise a  
8 reasonable inference that he knew the undisclosed references  
9 and withheld them with the specific intent to deceive the  
10 PTO. For these reasons, I recommend that Apple's request to  
11 dismiss the inequitable conduct counterclaims and strike the  
12 affirmative defenses in both cases be denied.

13 And I know you all knew this, but to clear: I'm  
14 not in any way suggesting anything about whether these  
15 claims are going to make it past summary judgment. And I'm  
16 certainly not saying that any of these claims are going to  
17 be tried in the first phase of the trial. All I'm saying is  
18 that we're moving forward in discovery and we will sort out  
19 later what, if anything, will be tried in the first trial.

20 Next in the 1378 case, Apple seeks to dismiss  
21 Masimo's counterclaims for monopolization and attempted  
22 monopolization under Section II of the Sherman Act. I set  
23 forth my understanding of the applicable legal standards in  
24 my report and recommendation in *3 Shape Trios v. Align*  
25 *Technology, Inc.*, that's 2020 WL 2559777, from May 20, 2020,

1 and I incorporate that articulation by reference.

2 Masimo alleges that the following conduct on the  
3 part of Apple qualifies as anticompetitive conduct: One,  
4 enforcing a fraudulently obtained patent, i.e., Walker  
5 Process fraud; two, leveraging its monopoly in iOS apps  
6 distribution market to harm competition in the health watch  
7 market; three, false advertising; and, four, predatory  
8 infringement.

9 Apple argues that Masimo lacks antitrust  
10 standing because it hasn't alleged an antitrust injury or a  
11 harm to competition. I disagree.

12 Masimo alleges, among other things, that Apple  
13 is seeking to enjoin Masimo from selling its W1 watch by  
14 enforcing a patent obtained through fraud i.e., a Walker  
15 Process claim.

16 Masimo further alleges that if Apple were to  
17 succeed in excluding Masimo from the health watch market,  
18 "Apple would become further entrenched as a monopolist and  
19 further free to set prices far above the level that would  
20 occur in the presence of true competition, set a low  
21 standard for health watch performance, and continue to sell  
22 inferior products."

23 The *TransWeb* case cited by Masimo explains that  
24 with respect to Walker Process claims, it is the abuse of  
25 the legal process by the antitrust defendant that makes the

1 attorneys fees incurred by the antitrust plaintiff during  
2 that legal process a relevant antitrust injury. To the  
3 extent Apple contends that TransWeb only authorized  
4 attorneys' fees as antitrust damages, not antitrust injury,  
5 that is incorrect. The case holds that attorneys' fees can  
6 constitute antitrust injury even if the infringement lawsuit  
7 failed to keep the defendant's product off the market.

8 I agree with Judge Goldberg in *Azurity Pharms v.*  
9 *Bionpharma*, 2023 WL 157732, from Jan. 11, 2023, in which he  
10 reasons that TransWeb squarely rejected the argument Apple  
11 makes here and tells that attorneys' fees can be an  
12 antitrust injury in these circumstances.

13 Apple next contends that Masimo has failed to  
14 plausibly allege a relevant market. Masimo's pleading  
15 identifies a "health watch" market, which it defined as the  
16 market for consumer-worn wristwatches that measure  
17 physiological parameters. Masimo makes additional  
18 allegations explaining why other devices don't -- other  
19 devices fall or don't fall within the market, as defined by  
20 Masimo.

21 In general, the determination of a relevant  
22 market is complex and fact-intensive inquiry which is  
23 generally inappropriate on a motion to dismiss. I cannot  
24 say that the relevant market alleged by Masimo is  
25 implausible, so I recommend denying Apple's request to

1 dismiss on that basis.

2 Apple next argues that Masimo fails to plausibly  
3 allege that Apple either has or will have a dangerous  
4 probability of obtaining monopoly power in the "health  
5 watch" market alleged by Masimo. Masimo alleges upon  
6 information and belief that Apple's market share of the U.S.  
7 "health watch" market exceeds 70 percent. Masimo's pleading  
8 explains that this estimate is based on: One, analyst  
9 estimates that Apple share of U.S. smart watch sales exceeds  
10 90 percent; two, analyst estimates that Apple share of the  
11 global smart watch market is about 50 percent; three, brands  
12 such as Hauwei and Samsung are more popular overseas, so one  
13 would expect Apple's share of the U.S. smart watch market to  
14 be greater than its share of the global smart watch market;  
15 and, four, Apple's share of the health watch market would be  
16 greater than or equal to its share of the smart watch market  
17 because the "health watch" market excludes smart watches  
18 that lacks physiological measurement features.

19 I can't say that Masimo's inferences are  
20 unreasonable, and I agree with Masimo that those allegations  
21 taken together raise a plausible inference that Apple's  
22 market share meets or exceeds 70 percent. That is  
23 sufficient at this stage to allege monopoly power.

24 Apple next contends that Masimo has failed to  
25 plausibly alleged anticompetitive conduct. As mentioned,

1 Apple has engaged in four types of anticompetitive conduct,  
2 including Walker Process fraud.

3 Apple's argument that the Walker Process theory  
4 is sufficient is bound up with its argument that Masimo's  
5 inequitable conduct allegations are deficient. As I have  
6 already determined that Masimo states a claim of inequitable  
7 conduct, I reject Apple's argument that Masimo's allegation  
8 of Walker Process fraud is deficient.

9 Apple points out that it is also asserting other  
10 patents that aren't alleged to have been obtained by fraud;  
11 however, Masimo contends that those patents are invalid or  
12 not infringed. If Apple is entitled to exclude Masimo from  
13 the market by enforcing other patents not accused of fraud,  
14 that may very well affect Masimo's antitrust claims, but  
15 that can't be decided at this stage.

16 Masimo's second theory of anticompetitive  
17 conduct is that Apple is leveraging its monopoly power in  
18 the iOS app distribution market to harm Masimo and  
19 competition as a whole in the separate "health watch"  
20 market. I have some questions about the viability of this  
21 theory, especially since everyone seemed to agree at the  
22 hearing that Masimo's watch app is available on Apple's app  
23 store. Masimo's third anticompetitive conduct theory is  
24 that Apple committed exclusionary conduct through allegedly  
25 false advertising; and its forth theory has to do with

1 so-called predatory patent infringement. I also have real  
2 questions about those two theories.

3 However, as I have already concluded that Masimo  
4 adequately states a claim under a Walker Process theory, I  
5 recommend that Apple's motion to dismiss Masimo's Sherman  
6 Act Section II claims be denied.

7 As I mentioned at the hearing, to the extent  
8 that Masimo seeks discovery that is not proportional to a  
9 viable theory of anticompetitive conduct, the Court will  
10 deal with it at that time.

11 Apple also seeks dismissal of Masimo's  
12 counterclaim for false advertising under the Lanham Act. I  
13 recommend denying the motion to dismiss.

14 Although Apple argues that none of the  
15 statements are literally false, Masimo has pleaded several  
16 potentially false representations along with underlying  
17 facts that, taken as true, raise a reasonable inference that  
18 the representations were false. As the proximate cause  
19 Masimo need only allege facts raising a reasonable inference  
20 that it is likely to be damaged as a result of the false  
21 advertising. Masimo alleges that the W1 and Apple watch are  
22 considered economic substitutes, that the Apple watch is an  
23 inferior product with respect to physiological parameter  
24 measurement, but that as a result of Apple's allegedly false  
25 and misleading advertising consumers erroneously choose the

1 Apple watch over the W1. That is enough at this stage.

2 Apple treats the Delaware state law false  
3 advertising and California UCL claims as rising or falling  
4 with its Lanham Act and Sherman Act claims. So I recommend  
5 that the state law claims be permitted to go forward as  
6 well.

7 And, finally, Apple argues that Masimo's willful  
8 and indirect infringement counterclaims should be dismissed  
9 because Masimo failed to allege that Apple had pre-suit  
10 knowledge of the patents.

11 Here's what I will say about that. Whatever  
12 merits that argument might have in its different case with  
13 different parties, it is not well taken at this stage in  
14 this case with these parties. The parties on pleadings  
15 discuss the parties' history with each other. You can look  
16 at the face of these patents and see that they assigned to  
17 Masimo and that most relate to user-worn devices for  
18 measuring physiological data.

19 It's implausible to me that either of these  
20 particular parties has a patent on such devices that the  
21 other side didn't know about before this suit was filed.  
22 And that concludes by report and recommendation.

23 We'll put it up on the docket indicating that  
24 all of the pending motions to dismiss should be denied and  
25 will refer to the Court's report and recommendation that was

1 issued from the bench.

2 The time to object, if any party chooses to,  
3 will run from today when we put the order up, but I would  
4 caution the parties to carefully think about whether the  
5 Court's resources are best spent dealing with objections on  
6 these particular motions.

7 All right. Thanks everyone. Take care.

8 (Whereupon, the following proceeding concluded  
9 at 12:32 p.m.)

10 I hereby certify the foregoing is a true  
11 and accurate transcript from my stenographic notes in the  
12 proceeding.

13 /s/ Michele L. Rolfe, RPR, CRR

U.S. District Court

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